

[Cite as *Fulk v. Richland Correctional Inst.*, 2005-Ohio-7088.]

IN THE COURT OF CLAIMS OF OHIO

MICHAEL FULK :  
Plaintiff :  
v. : CASE NO. 2005-05272-AD  
RICHLAND CORRECTIONAL : MEMORANDUM DECISION  
INSTITUTION :  
Defendant :  
: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Michael Fulk, an inmate, alleged that on some unspecified date in September, 2003, his television set and typewriter were vandalized by an unidentified inmate. Plaintiff also claimed his radio was stolen by an unidentified inmate on some unspecified day in September, 2003. At the time of these alleged incidents, plaintiff was incarcerated at defendant, Richland Correctional Institution ("RiCI").

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$694.39, the estimated total replacement cost of the alleged damaged and stolen electronic devices. The filing fee was paid.

{¶ 3} 3) Plaintiff did not provide any evidence to establish his property items were damaged or stolen.

{¶ 4} 4) Defendant denied any liability in this matter.

CONCLUSIONS OF LAW

{¶ 5} 1) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

[Cite as *Fulk v. Richland Correctional Inst.*, 2005-Ohio-7088.]

{¶ 6} 2) Although not strictly responsible for a prisoner's property, defendant had at least the duty of using the same degree of care as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶ 7} 3) Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶ 8} 4) Allegations that a theft or damage occurred is insufficient to show defendant's negligence. *Williams v. Southern Ohio Correctional Facility* (1985), 83-07091-AD; *Custom v. Southern Ohio Correctional Facility* (1985), 84-02425. Plaintiff must show defendant breached a duty of ordinary or reasonable care. *Williams*, supra.

{¶ 9} 5) Defendant is not responsible for thefts or property damage committed by inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. Southern Ohio Correctional Facility* (1978), 78-0217-AD.

{¶ 10} 6) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD.

{¶ 11} 7) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, to any essential issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶ 12} 8) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, paragraph one of the syllabus. The court is free to believe and disbelieve, all or any part of each witness's testimony. *State v. Anthill* (1964), 176 Ohio St. 61. The court does not find plaintiff's assertions particularly persuasive.

{¶ 13} 9) Plaintiff has failed to prove, by a preponderance of the evidence, his property was stolen or damaged as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

**[Cite as *Fulk v. Richland Correctional Inst.*, 2005-Ohio-7088.]**  
 IN THE COURT OF CLAIMS OF OHIO

MICHAEL FULK	:	
Plaintiff	:	
v.	:	CASE NO. 2005-05272-AD
RICHLAND CORRECTIONAL INSTITUTION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

---

DANIEL R. BORCHERT  
 Deputy Clerk

Entry cc:

Michael Fulk, #R146-367 P.O. Box 5500 Chillicothe, Ohio 45601-5500	Plaintiff, Pro se
Gregory C. Trout, Chief Counsel Department of Rehabilitation and Correction 1050 Freeway Drive North Columbus, Ohio 43229	For Defendant

RDK/laa  
 12/2  
 Filed 12/7/05  
 Sent to S.C. reporter 1/9/06